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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/284,816	06/14/1999	PHILIPPE MALCORPS	99-260	2849
7590 02/25/2004				
BACHMAN & LAPOINTE 900 CHAPEL STREET SUITE 1201 NEW HAVEN, CT 06510-2802				
			EXAMINER SHERRER, CURTIS EDWARD	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 02/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/284,816	MALCORPS ET AL.	
	Examiner	Art Unit	
	Curtis E. Sherrer, Esq.	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12/10/03
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40-63 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 40, 41 and 43-63 are rejected under 35 U.S.C. 103(a) as being unpatentable over New Glarus Brewing Company Apple Ale Beer (label)("New Glarus") or Cock's Fine Brews (<http://www.notchturner.com/cock/frutopen.htm>)("Cock") in light of Ashurst (Production and Packaging of Non-Carbonated Fruit Juices and Fruit Beverages (pages 174-6)) in view of Line *et al.* (U.S. Pat. No. 4,355,110)("Line") and in further view of applicants' admissions (page 5).

New Glarus or Cock in light of Ashurst in view of Line teach that cited in the last office action, but do not specifically teach the notoriously well known and inherent method steps for producing pils-type beer, i.e., cooking, boiling and fermenting. Applicants admit, on page 5 of their specification, that these steps are "commonly used in the brewing industry." The claim language itself admits that these steps are used to make a "pils-type beer." It would have been obvious to those of ordinary skill in the art to use the notoriously well known beer making steps of cooking, boiling and fermenting prior art worts as they are commonly used in the brewing arts.

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Claims 40 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over the well known mixed drink "Snakebite" in view of Line and in further view of applicants' admissions.

The process by which Snakebite is made has been previously stated. It is the mixture of cider and lager. Pils is a lager. Again, applicants admit that the newly claimed process steps are "commonly used in the brewing industry." It would have been obvious to those of ordinary skill in the art to use the notoriously well known lager beer making steps of cooking, boiling and fermenting prior art worts as they are commonly used in the brewing arts.

With regard to using a centrifuge, it would have been obvious those of ordinary skill in the art to clarify the inherently cloudy beverage.

Response to Arguments

Applicants' arguments filed 10/02/03 have been fully considered but they are not persuasive. Applicants argue that the claim limitations of the dependent claims have not been addressed. Applicants' attention is directed to previous Office actions, where they were initially discussed. Applicants also argue that no scientific evidence has been supplied to show that the claimed haze would be obtained. The disclosed prior art teaches the process steps claimed and therefore it is inherent that the haze would be obtained. If this is not the case, it is possible that the claims are not enabled.

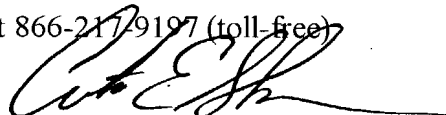
Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Curtis E. Sherrer, Esq. whose telephone number is 571-272-1406. The examiner can normally be reached on Tuesday-Friday, 8AM-6:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Curtis E. Sherrer, Esq.
Primary Examiner
Art Unit 1761